

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY





U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

DATE: NOV 03 2011

OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE:

Petitioner: 

Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision will be withdrawn and remanded to the director for the issuance of a new decision, which shall be certified to the AAO for review.

The petitioner, a Delaware corporation, claims that it is engaged in contract textile screen printing, and states that it is an affiliate of [REDACTED], located in El Salvador. Accordingly, the United States entity petitioned U. S. Citizenship and Immigration Services (USCIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner seeks to employ the beneficiary in the position of Plant Manager for a three-year period.

The director denied the petition on June 4, 2009, concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director noted that the petition and supporting documentation were inconsistent as they listed two different positions offered to the beneficiary, plant manager and shift manager. The director noted that the petitioner did not submit sufficient evidence to establish that the beneficiary supervises a staff of professional, managerial or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's

prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term “managerial capacity” means an assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a

managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on April 8, 2009. The Form I-129 indicated that the beneficiary will be employed in the position of Manager – Plant Manager. In a support letter dated April 2, 2009, counsel explained that the petitioner is "one of the largest contract textile screen printing companies in the United States, with over eight million impressions annually." The petitioner also described the position offered to the beneficiary as follows:

[The beneficiary] will fill the position of Production Manager in the Norfolk Virginia office of [the petitioner]. This position is a key managerial position within [the petitioner] and [redacted] facilities, because it is the Production Manager who brings together the work flow for each organization, supervises work, sets standards for the work and general guidelines for each assignment which must be followed and executed by the team, and coordinates the various teams to assure that each customer is serviced adequately and on schedule. He must also coordinate the work of outside contractors who are engaged to perform services on accounts, such as shipping, suppliers, and other vendors that assist in servicing customer's accounts. The Production Manager is responsible for eight to ten supervisors and managers who are assigned to the various project teams. He has day-to-day discretionary authority in coordinating and directing the work of the production departments and is responsible for proper execution of the servicing customer orders. He evaluated the performance of department personnel and can recommend hiring and firing of personnel. As the person responsible for production for a number of accounts, the Production Manager must spend a majority of his time coordinating the work of each team, reviewing its quality for conformity to overall [petitioner's] standards, and administering the department staff. Strong managerial skills are needed for the important coordination and scheduling functions performed by the Production Manager.

The petitioner submitted an organizational chart of the U.S. company that indicated the President as head of the company with Human Resources and the Chief Financial Officer as the second level. The company has

five departments, including the manufacturing department, that has three shift managers which is the position offered to the beneficiary.

On April 13, 2009, the director requested additional evidence to establish that the beneficiary was employed in a managerial/executive capacity in the foreign firm and will be employed in a managerial or executive capacity in the U.S. company.

In a response letter, dated May 21, 2009, counsel for the petitioner detailed the beneficiary's managerial duties while working at the foreign company; however, did not discuss in detail the duties the beneficiary will perform in the U.S. and if they rise to the level of a primarily managerial or executive capacity.

On appeal, counsel for the petitioner provided further clarification of the duties to be performed by the beneficiary in the U.S. company as follows:

[The beneficiary] will have between 50 and 75 employees working during each shift, who report to eight to ten at the managerial or supervisory level employees under [the beneficiary's] supervision. He will supervise two to six managers for the pre-press inks and screens departments, each of whom may individually supervise three to seven employees, depending on production requirements. Those employees are responsible for the 22 station automatic printing machines capable of printing up to 20 colors. A single eight hour shift may produce up to 20,000 prints. [The beneficiary] will also supervise eight to ten employees in the finishing and packing area, each of whom individually supervises eight to ten employees charged with preparing garments and prints for shipping. Before shipping, every individual item must be inspected and packed. Finally, [the beneficiary] will supervise one to two administrators who are responsible for quality assurance, including performance tracking of production and tracking the quantity of production for each shift. The administrator will review the quality and production numbers with [the beneficiary] continually throughout each shift and adjustments will be made by [the beneficiary] to meet productions requirements based on the production requirements.

Counsel also states that the beneficiary will be "responsible for managing the entire plant's operations during the third shift," and will "monitor each individual department's output, and direct the activities of each individual department ensuring that the activities of each department are synthesized and synchronized so that the final product is produced both efficiently and at a high standard." In addition, the beneficiary will supervise "from eight to ten supervisors, administrators, and managers, each directing the work of individual teams or departments." The supervisors reporting directly to the beneficiary include the "Administrative Supervisor, the Finishing and Packing Supervisor, the Quality Supervisor, two Printing Supervisors and the Inks and Screen Supervisor." Counsel further states that the beneficiary will also manage an essential function in ensuring the manufacturing of the products are completed.

Finally, counsel for the petitioner states that the beneficiary will also fill a position of executive capacity as he will be "solely responsible for the production aspect of [the petitioner's] business," during the third shift. The beneficiary will be responsible to "set production goals regarding quality and quantity," and "will [have] the authority to determine the appropriate measures necessary to properly execute each order during his shift."

The petitioner also submits an evaluation of the beneficiary's position with the U.S. company. The author is an Associate Professor of Management Science in the [REDACTED] of Maryland, College Park, Maryland. The author concluded that the beneficiary will function in a managerial position at a Production Manager for the petitioner.

The director denied the petition on June 4, 2009 on the ground that insufficient evidence was submitted to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company.

Upon review of the record, the AAO withdraws the director's denial. The petitioner provided sufficient evidence that the beneficiary will be a plant manager for one out of the three shifts of the manufacturing facility. The beneficiary will supervise the company's manufacturing department and supervise the day-to-day activities of five supervisors and additional staff. In addition, the petitioner further clarified the beneficiary's proposed duties in the United States in its brief on appeal. According to the documentation, it appears that the beneficiary is supervising employees who will relieve him from performing non-qualifying duties.

Upon review, however, the applicant has not submitted sufficient evidence to establish that a qualifying relationship exists between the foreign company and the United States entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer is the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

In this matter, the petitioner submitted a letter dated April 2, 2009, stating that the foreign company is a subsidiary of the petitioner. The petitioner explained that it is wholly owned by [REDACTED]. Furthermore, [REDACTED] own [REDACTED], 60% and 40% respectively, which is a holding company for their majority ownership interest (70%) in [REDACTED], LLC which owns 99.9% of [REDACTED]. [the foreign company]"

The petitioner submitted the article of incorporation for the petitioner and one stock certificate, numbered 17, issuing 25,000 shares to [REDACTED]. The stock certificate is not signed or dated. As general evidence of a petitioner's claimed qualifying relationship, a stock certificate alone is not sufficient. The petitioner may submit the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings that must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. In the instant matter, the petitioner submitted the articles of incorporation and one stock certificate for the petitioner issuing 25,000 shares to [REDACTED]. The stock certificate is not signed or dated. In addition, the number of the stock certificate is 17, thus it is impossible to determine ownership without the stock ledger to view stock certificates 1 through 16.

In addition, the evidence is not clear as to the ownership of the claimed foreign company. The petitioner submitted a translation of a document discussing the foreign company that stated [REDACTED] created a partnership but it does not indicate the ownership of that foreign [REDACTED]

company. In addition, the petitioner did not clearly indicate the ownership of [REDACTED] and [REDACTED]

Furthermore, the petitioner did not submit sufficient evidence to establish that the foreign company is a qualifying organization currently doing business as required by 8 C.F.R. § 214.2(l)(3). The petitioner did not submit any documentation to evidence that the foreign company is still doing business such as tax returns, payroll summary, bank statements, financial statements, lease agreements, invoices, or contracts.

For this reason, the appeal may not be sustained, and the matter must be remanded to the director for further action.

It is noted that the burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and the entry of a new decision, which shall be certified to the AAO for review.